

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEROME THOMPSON (08-A-4742)

Plaintiff,

v.

ORDER
12-CV-475-A

GOVERNOR ANDREW CUOMO;
COMMISSIONER BRIAN FISCHER;
SUPERINTENDENT BRADT of Attica Corr.
Fac.; CAPTAIN ROBINSON Attica Corr.
Fac.; SGT. R. MITCHELL Attica Corr. Fac.;
CARL J. KOENIGSMANN, M.D., Deputy
Comm. Chief Medical Officer; C.O.
TOMPOROWSKI; C.O. BOSWORTH;
C.O. MS K. SHEARING; C.O. K. MORRIS;
C.O. M. MASOCCO; C.O. MORDACZ;
DOCTOR MS GAFT; RN HAWELY;
D.D.S. HUGHES; RN WASSINK;
QUARANTINE SGT.; and C.O. Mr. C.;

Defendants.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1)(B). On February 14, 2014, Magistrate Judge McCarthy filed a Report and Recommendation, Dkt. No. 28, recommending that plaintiff's motion "to withdraw" certain defendants, Dkt. No. 24, be granted in part and denied in part, that plaintiff's motion for summary judgment, Dkt. No. 26, be denied as premature, and that defendants' motion for partial dismissal, Dkt. No. 21, be denied as moot.

The Court has carefully reviewed the Report and Recommendation, the record in the case, the pleadings and materials submitted by the parties, including the objections having been filed by plaintiff, Dkt. No. 33, and it is hereby

ORDERED, pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, the plaintiff's motion to withdraw as against certain defendants is granted to the extent it seeks to dismiss the Amended Complaint against defendants Dr. Koenigsman, Superintendent Bradt, PA Graf, C.O. Morris, C.O. Shearing, C.O. Bosworth, RN Wassink, RN Hawley, and Captain Robinson, but otherwise denied. Further, plaintiff's motion for summary judgment is denied as premature, without prejudice to renewal, and that defendants' motion for partial dismissal is denied, as moot.

Further, on February 25, 2014, defendant Thompson's motion styled a petition for mandamus, Dkt. No., 30, to prompt a decision on the motions that are resolved by this Order was docketed. In light of disposition of the motions, the petition is terminated as moot.

Finally, in his objections to Magistrate Judge McCarthy's Report and Recommendation, plaintiff Thompson also seeks appointment of an attorney. The Court has considered the factors to be considered for assignment of counsel as set forth in *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), and denies plaintiff's request for assigned counsel at this juncture, but with out prejudice to renewal.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

IT IS SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: March 12, 2014

